



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

KWAINEE THOMPSON,

Plaintiff,

-against-

DEPARTMENT OF CORRECTIONS, et. al,

Defendant.

21-CV-10371 (VEC) (BCM)

**ORDER**

**BARBARA MOSES, United States Magistrate Judge.**

On December 6, 2021, plaintiff Kwainee Thompson, who is incarcerated on Rikers Island, filed his *pro se* Complaint against the City of New York (City), the Department of Correction (DOC), Warden Renee, and Captain Carter, asserting civil rights claims pursuant to 42 U.S.C. § 1983. (Dkt. No. 2.) On December 29, 2021, the Court dismissed plaintiff's claims against the DOC, because it "is not an entity that can be sued," and requested that the City, Warden Renee, and Captain Carter waive service. (Dkt. No. 12.)

On April 8, 2022, all four originally-named defendants (including, oddly, the DOC) moved to dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(6). (Dkt. No. 19.) On April 29, 2022, plaintiff responded with a document entitled "Notice of Motion to Admend [sic]/Notice Opposition to the Dismiss Motion April 8, 2022." (Dkt. No. 25.) Having reviewed the document, the Court concludes that it is in fact plaintiff's Amended Complaint, asserting civil rights claims pursuant to 42 U.S.C. § 1983 and pendent state law claims against the City, Warden Renee, and Captain Carter. Pursuant to Fed. R. Civ. P. 15(a)(1)(B), a plaintiff is entitled to amend his pleading once, without leave of Court, if he does so within 21 days of service of the defendants' motion to dismiss. Plaintiff Thomson having timely amended his pleading, the Clerk of Court is respectfully directed to re-designate Dkt. No. 25 as his Amended Complaint.

Defendants shall advise the Court in writing, no later than **May 12, 2022**, whether they elect to (i) withdraw their pending motion to dismiss as moot; or (ii) pursue the same motion, on the same papers, as against the Amended Complaint. If defendants withdraw their pending motion, they must answer, move, or otherwise respond to the Amended Complaint no later than **June 2, 2022**.

Dated: New York, New York  
May 5, 2022

**SO ORDERED.**

A handwritten signature in blue ink, appearing to read "Barbara Moses".

**BARBARA MOSES**  
**United States Magistrate Judge**